

ESTTA Tracking number: **ESTTA333438**Filing date: **02/22/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Utah Division of Travel and Tourism
Granted to Date of previous extension	02/20/2010
Address	Council Hall/Capitol H.300 N. State St. Salt Lake City, UT 84114 UNITED STATES

Correspondence information	Utah Division of Travel and Tourism Council Hall/Capitol H.300 N. State St. Salt Lake City, UT 84114 UNITED STATES wloos@utah.gov Phone:801-366-0353
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Applicant Information

Application No	77647732	Publication date	12/22/2009
Opposition Filing Date	02/22/2010	Opposition Period Ends	02/20/2010
Applicant	Jet Equity, LLC 14235 S. 50th E. Ave. Bixby, OK 74008 UNITED STATES		

Goods/Services Affected by Opposition


Class 036. First Use: 2008/01/15 First Use In Commerce: 2008/01/15 All goods and services in the class are opposed, namely: Offering aircraft fractional ownership programs to others, and brokerage services in the field of aircraft
Class 039. First Use: 2008/01/15 First Use In Commerce: 2008/01/15 All goods and services in the class are opposed, namely: Leasing of aircraft; aircraft chartering services


Grounds for Opposition

Dilution	Trademark Act section 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3454303	Application Date	03/10/2006
Registration Date	06/24/2008	Foreign Priority Date	NONE
Word Mark	UTAH LIFE ELEVATED		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 016. First use: First Use: 2006/04/15 First Use In Commerce: 2006/04/15 printed publications, namely, books, pamphlets and brochures featuring information about the State of Utah and its events, attractions, history, parks, recreation opportunities, environment and geography</p> <p>Class 025. First use: First Use: 2006/04/15 First Use In Commerce: 2006/04/15 Clothing, namely, shirts, coats, jackets, hats, caps</p> <p>Class 035. First use: First Use: 2007/04/15 First Use In Commerce: 2007/04/15 Promoting the tourism-related goods and services of others in the state of Utah via advertising in print, audio, video, digital and on-line medium; promoting the tourism, recreation, business and economic development interests of the State of Utah; promoting public awareness of Utah's tourist attractions and recreational opportunities; providing information in the field of business and economic development in the State of Utah via global communications networks</p> <p>Class 039. First use: First Use: 2006/08/15 First Use In Commerce: 2006/08/15 Providing information in the field of travel and tourism in the State of Utah</p>

U.S. Registration No.	3486103	Application Date	03/29/2007
Registration Date	08/12/2008	Foreign Priority Date	NONE
Word Mark	UTAH LIFE ELEVATED		
Design Mark			
Description of Mark	The mark consists of the words "Life Elevated" located below the word "Utah", which is written in stylized characters.		
Goods/Services	<p>Class 006. First use: First Use: 2007/11/19 First Use In Commerce: 2007/11/19 Metal license plates</p> <p>Class 009. First use: First Use: 2008/01/15 First Use In Commerce: 2008/01/15 Decorative refrigerator magnets, refrigerator magnets, mouse pads</p> <p>Class 014. First use: First Use: 2007/07/31 First Use In Commerce: 2007/07/31 Lapel pins, ornamental lapel pins</p>		

	Class 016. First use: First Use: 2006/04/30 First Use In Commerce: 2006/04/30 Ball point pens, gel roller pens, note pads, bumper stickers, calendars, desk calendars, printed calendars, wall calendars Class 018. First use: First Use: 2006/04/30 First Use In Commerce: 2006/04/30 Backpacks, luggage tags
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Attachments	76978802#TMSN.gif (1 page)(bytes) 77975536#TMSN.jpeg (1 page)(bytes) opposition letter life elevated.pdf (3 pages)(17774 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William C Loos/
Name	Utah Division of Travel and Tourism
Date	02/22/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77647732
For the Mark: Jet Equity Life elevated
Published in the Official Gazette on 2009-12-22

Utah Division of Travel and Development
300 N. State St. Council Hall/Capitol H.
Salt Lake City, Utah 84114

v.

Jet Equity, LLC
14235 S. 50th E. Ave.
Bixby, OK 74008

NOTICE OF OPPOSITION

Utah Division of Travel and Development
300 N. State St. Council Hall/Capitol H.
Salt Lake City, Utah 84114

The above-identified opposer believes that it will be damaged by registration of the mark shown in the above-identified application and hereby opposes the same.

The grounds for opposition are as follows:

1. The Applicant's "Jet Equity Life Elevated" mark is sufficiently similar to Utah's registered mark "Utah Life Elevated" that it would cause dilution of Utah's registered mark. "[D]ilution by blurring' is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. 15 U.S.C.A. § 1125. Utah's mark is famous, distinctive, used in interstate commerce, and there is likelihood of dilution.
2. Utah's mark is famous in the tourism industry. "[A] mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner."¹⁵ U.S.C.A. § 1125. Utah has used the mark in national advertising campaigns encouraging travel and tourism in the State of Utah beginning in April of 2006. Since then Utah's trademark has been used widely in television advertisements.¹ The slogan has been used in regional radio advertisements.²

¹ Advertisements using the trademark have aired on national cable markets for both summer and winter campaigns. It has also been used in spot market advertising in Los Angeles, Los Vegas, Phoenix, Denver,

Additionally the Utah's trademark has appeared in national and international print ads.³ The trademark also has been used on many other promotional items.⁴ Finally Utah's trademark is used in advertising at Salt Lake International Airport and on Delta Airlines in flight advertisements.

3. The use of this mark is ongoing and constitutes a famous mark within the tourism industry. While not necessarily a legally recognized method of measuring famousness of a particular mark, a search of "life elevated" on popular internet search engines return primarily results including Utah's trademark and Utah's use of that mark in tourism initiatives and advertisements.
4. Utah's Mark is inherently distinctive based on its suggestive nature. The "life elevated" slogan is suggestive in that it requires the audience to use imagination, thought and perception to reach a conclusion about the product being sold; tourism. It promotes the image and recognition of Utah as having a wide range of elevations, which create the primary tourism draws. Inherently distinctive marks such as Utah's are automatically protected.
5. Utah's mark is used in interstate commerce. As noted *supra*, Utah has expended considerable time and money on interstate advertising for tourism in Utah.
6. According to the Applicant's application, the first use in commerce was January 1, 2008. Utah's first use of its mark was in April of 2006 and its application in March of 2006. This application was published in July of 2007, and registered in August of 2008. Additionally Utah's use and resulting public recognition was widespread in interstate commerce prior to Applicant's first use in January of 2008.
7. Finally there is a likelihood of dilution. Dilution in violation of the Lanham Act can occur regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury. 15 U.S.C.A. § 1125. Dilution is the gradual reduction in the distinctiveness or value of a mark. The "life elevated" slogan, as part of Utah's registered marks, is famous and associated with Utah's tourism. The use of the phrase in Utah's mark and the applicants mark make them sufficiently similar that use of the same phrase in the Applicant's mark, particularly in a related industry, will erode the

and San Diego. Radio ads with the "life elevated" slogan have been broadcast in Salt Lake City, Boise, Los Angeles, Idaho Falls, Grand Junction, and San Diego.

² Radio ads with the "life elevated" slogan have been broadcast in Salt Lake City, Boise, Los Angeles, Idaho Falls, Grand Junction, and San Diego.

³ The Trademark has appeared in print advertisements in the New York Times Style Magazine, Conde Naste Traveler, National Geographic Adventure, Sunset Magazine, Outside Magazine, Backpacker Magazine, Los Angeles Magazine, Ski, Skiing, Delta Sky Magazine, Gourmet Magazine, Bon Appetite, AAA Tour Guide (Utah/Colorado Edition), Highroads, Westways, Madden insert, Budget Travel Magazine, Canadian Traveler, American Cowboy, American Park Networks National Parks Guide, American Journal (Germany), Outdoor Utah Recreation Guide, Travel Host, and other publications with co-op partners.

⁴ These include the Utah Department of Transportation State Map (1 million maps have been printed for distribution), Utah Travel Guide (approximate distribution of 25,000 per year), Utah Official Scenic Calendar since 2007, Banners, T-shirts, pens, backpacks, water bottles, mugs, tote bags, lapel pins, hats, note pads, magnets, wristbands blankets, dress shirts, and other items.

distinctive nature of Utah's mark. In light of the fact that Utah uses its mark for advertising in the Salt Lake International Airport as well as advertises on commercial flights, it is likely that potential consumers of the Applicant's services will also be potential consumers of Utah tourism.

8. Therefore Utah opposes the application. Its use would dilute Utah's registered Marks.

By: _____
(William C. Loos)

Date _____